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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,265	06/28/2005	Georg Michelson	F-8241	5315
28107 7590 06/07/2007 JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			EXAMINER SUGARMAN, SCOTT J	
			ART UNIT 2873	PAPER NUMBER
			MAIL DATE 06/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/509,265

Applicant(s)

MICHELSON ET AL.

Examiner

Scott J. Sugarman

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miehle et al (Patent 6247812) in view of Matsugu et al (Patent 5625408). Re claims 9-13: Miehle et al disclose a method for examining an ocular fundus in which an illuminating device, an image generating device (see col. 12, lines 24-26), computer and other optical system are used to generate, store, evaluate, compare the fundus images (data layers) with image patterns recognition process (classification) (see col. 10, lines 58-66; col. 10, lines 33-41; col. 5, lines 14-20; unit 1080) corresponding to eye diseases (see col. 4, lines 18-21 and 66-67; and col. 5, lines 1-8), but does not expressly disclose a control unit for controlling an illuminating device and an image generating device. However, Matsugu et al disclose a method in which control units (6L and 6R) control the positions of image generating devices (cameras, 1L and 1R) (see col. 8, lines 63-67 and Fig. 9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a method similar to that of Miehle et al to include control units similar to those taught by Matsugu et al that control the positions (or new settings)

Art Unit: 2873

of the image generating devices in order to examine and compare the various images of the eye, since this would have resulted in the accuracy of alignment of images.

Re claims 14 and 15: Miehle et al discloses an eye method comprising a laser device that generates laser beam for image capture (see col.12, lines 18-19) and an illuminating device that generates relatively low intensity illuminating light onto selected portions of the eye. The optics (laser devices) are used to examine selected portions of the eye (see col.12, lines 28-44).

Re claim 16: Miehle et al discloses an eye method comprising a computer (1000 includes pattern recognition process and matching device) which automatically matches (compares and analyzes) the identify patterns to correlate a structural defect or condition (one or more diseases) of vision problems. (see col. 9, lines 5-17 and col. 5, lines 1-8).

Re claims 17 and 18: The method and device of Miehle et al has a memory (1020) that records the image of the fundus.

Response to Arguments

Applicant's arguments filed December 13, 2006 have been fully considered but they are not persuasive. Applicant argues that Miehle et al only obtains and compares two different types of data from the same patient as opposed to the claimed method of comparing data from a patient to existing fundus image patterns of known diseases. The Examiner points out that the Miehle et al does recognize "[T]he combined data is presented in a manner that makes it easier for a doctor to diagnose the cause of a loss

of vision sensitivity. A device or method embodying the invention may be capable of automatically correlating a loss of vision to a specific biological structural defect or condition to identify the cause of the loss of vision (col. 4, lines 15-21)" which indicates that Miehle et al understands that the images are compared and correlated to a specific biological structural defect or condition (known diseases). Even if comparing two image patterns of the same person, nothing in the claims precludes this, since just one has to correspond to indicating a disease that is recognized (as taught by Miehle et al).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

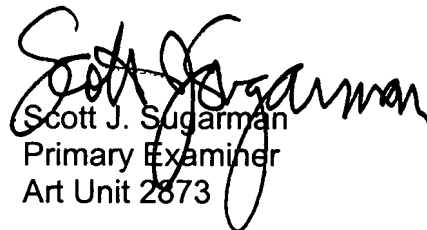
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2873

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott J. Sugarman whose telephone number is (571)272-2340.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571)272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Scott J. Sugarman
Primary Examiner
Art Unit 2873

sjs
June 4, 2007